



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 191 and 194

[EPA-HQ-OAR-2014-0609; FRL-9917-73-OAR]

Review Process to Determine Whether the Waste Isolation Pilot Plant Continues to Comply with the Disposal Regulations and Compliance Criteria

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; official opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or the Agency) intends to evaluate whether or not the Waste Isolation Pilot Plant (WIPP) continues to comply with the Agency's environmental radiation protection standards for the disposal of radioactive waste. Pursuant to the 1992 WIPP Land Withdrawal Act (LWA), as amended, the U.S. Department of Energy (DOE, or the Department) must submit documentation of continued compliance with the EPA's standards for disposal and other statutory requirements every five years after the initial receipt of transuranic waste at WIPP.

The DOE's 2014 Compliance Recertification Application (CRA) was received by the EPA on March 26, 2014, and a copy may be found on the EPA's WIPP website (<http://www.epa.gov/radiation/wipp/2014application.html>) and in the public dockets (see ADDRESSES Section). The EPA will determine when the DOE has provided a complete application; the Agency's completeness determination will be conveyed to the DOE and published in the Federal Register. The EPA will evaluate the "complete" application in determining whether the WIPP facility continues to comply with the radiation protection

standards for disposal. The Agency requests public comment on all aspects of the DOE's application.

DATES: Comments in response to DOE's 2014 recertification application must be received by the end of the comment period. The comment period will extend beyond the time when the EPA notifies the DOE that the recertification application is complete. The ending date of the public comment period will be specified in a subsequent **Federal Register** document. Announcements will be published in the **Federal Register** to provide information on the Agency's completeness determination and final recertification decision.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OAR-2014-0609**, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: to a-and-r-docket@epa.gov.
- Fax: 202-566-1741.
- Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Attn: Docket ID No. **EPA-HQ-OAR-2014-0609**. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA

without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy at the Air and Radiation Docket, the EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742. As provided in the EPA's regulations at 40 CFR part 2, and in accordance with normal the EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

These documents are also available for review in electronic (CD/DVD) format at the WIPP Information Center in DOE's Carlsbad Field Office (Skeen-Whitlock Building). The

Carlsbad WIPP Information Center is open from 8:00 a.m. to 3:00 p.m., Monday through Friday, excluding legal holidays. The telephone number for the WIPP Information Center is 1-800-336-WIPP.

FOR FURTHER INFORMATION CONTACT: Ray Lee, Office of Radiation and Indoor Air, Radiation Protection Division, Center for Radiation Information and Outreach, Mail Code 6608T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC, 20460; telephone number: 202-343-9463; fax number: 202-343-2305; e-mail address: lee.raymond@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Should I Consider as I Prepare My Comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through www.regulations.gov or e-mail. Clearly mark the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - the agency may ask you to respond to specific questions or

organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

The WIPP was authorized in 1980, under section 213 of the DOE National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96-164, 93 Stat. 1259, 1265), "for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States." The WIPP is a disposal system for transuranic (TRU) radioactive waste. Developed by the DOE, the facility is located near Carlsbad in southeastern New Mexico. TRU waste is emplaced 2,150 feet underground in an ancient layer of salt that will eventually "creep" and encapsulate the waste containers. The WIPP has a total capacity of 6.2 million cubic feet of TRU waste.

The 1992 WIPP LWA (Pub. L. 102-579)¹ limits radioactive waste disposal in the WIPP to TRU radioactive wastes generated by defense-related activities. TRU waste is defined as waste containing more than 100 nano-curies per gram of alpha-emitting radioactive isotopes, with half-lives greater than twenty years and atomic numbers greater than 92. The Act further stipulates that radioactive waste shall not be TRU waste if such waste also meets the definition of high-level radioactive waste, has been specifically exempted from regulation with the concurrence of the Administrator, or has been approved for an alternate method of disposal by the Nuclear Regulatory Commission. The TRU radioactive waste proposed for disposal in the WIPP consists of materials such as rags, equipment, tools, protective gear and sludges that have become contaminated during atomic energy defense activities. The radioactive component of TRU waste consists of man-made elements created during the process of nuclear fission, chiefly isotopes of plutonium. Some TRU waste is contaminated with hazardous wastes regulated under the Resource Conservation and Recovery Act (RCRA; 42 U.S.C. 6901-6992k). The waste proposed for disposal at the WIPP derives from Federal facilities across the United States, including locations in Colorado, Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee, and Washington.

The WIPP must meet the EPA's generic disposal standards at 40 CFR Part 191, Subparts B and C, for high-level and TRU radioactive waste. These standards limit releases of radioactive materials from disposal systems for radioactive waste, and require implementation of measures to provide confidence for compliance with the radiation release limits. Additionally, the

¹ The 1992 WIPP Land Withdrawal Act was amended by the "Waste Isolation Pilot Plant Land Withdrawal Act Amendments," which were part of the National Defense Authorization Act for Fiscal Year 1997.

regulations limit radiation doses to members of the public, and protect ground water resources by establishing maximum concentrations for radionuclides in ground water. To determine whether the WIPP facility meets these disposal standards, the Agency issued the 1997 WIPP Compliance Criteria (40 CFR part 194), which interprets and implement the disposal standards specifically for the WIPP site. The Compliance Criteria—along with its accompanying preamble and supporting documents—describe what information the DOE must provide and how the EPA evaluates WIPP’s performance and provides ongoing independent oversight. Thus, the Agency implemented its environmental radiation protection standards, 40 CFR part 191, by applying the WIPP Compliance Criteria, 40 CFR part 194, to the disposal of TRU radioactive waste at the WIPP. For more information about 40 CFR part 191, refer to **Federal Register** notices published in 1985 (50 FR 38066-38089, September 19, 1985) and 1993 (58 FR 66398-66416, December 20, 1993). For more information about 40 CFR part 194, refer to **Federal Register** notices published in 1996 (61 FR 5224-5245, February 9, 1996) and 1995 (60 FR 5766-5791, January 30, 1995).

Using the process outlined in the WIPP Compliance Criteria, the EPA determined on May 18, 1998 (63 FR 27354), that DOE had demonstrated that the WIPP complied with Agency’s radioactive waste disposal regulations at subparts B and C of 40 CFR part 191. The EPA’s certification determination permitted the WIPP to begin accepting TRU waste for disposal, provided that other applicable conditions and environmental regulations were met.

Since the 1998 certification decision, the EPA has conducted ongoing independent technical review and inspections of all WIPP activities related to compliance with the EPA’s disposal regulations. The initial certification decision identified the starting (baseline) conditions

for the WIPP site and established the waste and facility characteristics necessary to ensure proper disposal in accordance with the regulations. At that time, the EPA and the DOE understood that future information and knowledge gained from the actual operations of the WIPP would result in changes to best practices and procedures for the facility.

In recognition of this, section 8(f) of the amended WIPP LWA requires the EPA to evaluate all changes in conditions or activities at the WIPP every five years to determine if the facility continues to comply with the Agency's disposal regulations. This determination is not subject to standard rulemaking procedures or judicial review, as stated in the aforementioned section of the WIPP LWA.

The first recertification process began with the DOE's submittal of the initial CRA, which was received by the Agency on March 26, 2004. The EPA deemed the CRA-2004 to be complete on September 29, 2005, and published its first WIPP recertification decision on March 29, 2006 (71 FR 18010).

The EPA received the Department's second CRA on March 24, 2009. The Agency deemed the CRA-2009 to be complete on June 29, 2010, and published the second WIPP recertification decision on November 18, 2010 (75 FR 70584).

The EPA received the Department's third CRA on March 26, 2014. After EPA has determined that the application is complete, the Agency will review the CRA-2014 to ensure that all of the changes made at the WIPP since the second recertification process have been accurately reflected and that the facility will continue to safely contain TRU radioactive waste. If the EPA approves the CRA-2014, it will set the parameters for how the WIPP will be operated by the DOE over the next five years. This approved CRA-2014 (along with any supplemental

completeness information submitted by the DOE) will then serve as the baseline for the next recertification that will occur starting in 2019.

An important consideration in the EPA's review of the DOE's CRA-2014 is the radiation release that took place in the WIPP's underground disposal area in February 2014. Recovery activities are currently ongoing. EPA conducted oversight activities in response to the incident and these activities are discussed on EPA's website (<http://www.epa.gov/radiation/news/wipp-news.html#wippradevent>). EPA's review confirmed that DOE remains in compliance with EPA's standards; however, EPA identified several areas where improvements would enhance DOE's ability to provide the best possible information to the public and its partner agencies during a release. Although the incident took place after the preparation of the CRA-2014, the Department has indicated that changes will need to be made to the WIPP disposal system in order to reopen the facility and that the DOE will provide supplemental information to the Agency on the incident and potential ramifications on compliance. This information will be made available in the Agency's public dockets and posted on EPA's WIPP website. The EPA is currently considering how anticipated changes in the facility design will impact the recertification process.

With today's notice, the Agency solicits public comment on the DOE's documentation of whether the WIPP facility continues to comply with the disposal regulations. A copy of the application is available for inspection on the EPA's WIPP website (<http://www.epa.gov/radiation/wipp/2014application.html>) and in the public dockets described in the **ADDRESSES** section. Other background information related to the Agency's recertification activities are also available in our public dockets and on our WIPP website. The EPA will

evaluate the complete application in determining whether the WIPP continues to comply with the radiation protection standards for disposal. In addition, the EPA will consider public comment and other information relevant to the WIPP's compliance. The Agency is most interested in public comment on issues where changes have occurred that may potentially impact the WIPP's ability to remain in compliance with the requirements in the EPA's disposal regulations, as well as any areas where the public believes that changes have occurred and have not been identified by the DOE. Additionally the Agency expects to provide public meetings in New Mexico during the review process to encourage and facilitate participation by interested stakeholders.

The first step in the recertification process is a "completeness" determination. The EPA will make this completeness determination as a first step in its more extensive technical review of the application. This determination is based on a number of the Agency's WIPP-specific guidances, most notably, the "Compliance Application Guidance" (CAG; EPA Pub. 402-R-95-014) and "Guidance to the U.S. Department of Energy on Preparation for Recertification of the Waste Isolation Pilot Plant with 40 CFR Parts 191 and 194" (Docket A-98-49, Item II-B3-14; December 12, 2000). Both guidance documents include guidelines regarding: (1) content of certification/recertification applications; (2) documentation and format requirements; (3) time frame and evaluation process; and (4) change reporting and modification. The Agency developed these guidance documents to assist the DOE with the preparation of any compliance application for the WIPP. It is the Agency's intent that these guidance documents give the DOE and the public a general understanding of the information that is expected to be included in a *complete* application of compliance. However, the DOE does not have to resubmit information already supplied to the EPA in prior recertification applications. Thus, the focus of each recertification is

on any changes to the disposal system since the previous recertification decision (in this case, 2009-2010). The EPA may request additional information as necessary from the Department to ensure the completeness of the CRA.

Once the 2014 recertification application is deemed complete, the EPA will provide the DOE with written notification of its completeness determination and publish a **Federal Register** notice announcing this determination. All correspondence between the EPA and the DOE regarding the completeness of the CRA-2014, as well as any additional supplemental information submitted by the Department, will be posted on our website and placed in the public dockets.

The EPA will make a final decision as to whether the WIPP continues to meet the disposal regulations after each of the aforementioned steps (technical analysis of the application, issuance of a notice on the CRA-2014's completeness in the **Federal Register**, and analyses of public comment) have been completed. As required by the WIPP LWA, the Agency will make a final recertification decision within six months of issuing its completeness determination.

List of Subjects in 40 CFR Part 191 and 194

Environmental protection, Radiation protection, Transuranic radioactive waste, Waste treatment and disposal, Waste Isolation Pilot Plant.

Dated: October 1, 2014.

Michael P. Flynn,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2014-24260 Filed 10/09/2014 at 8:45 am; Publication Date: 10/10/2014]